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DEPARTMENT OF LABOR

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

THE CENTER FOR INVESTIGATIVE  
REPORTING and WILL EVANS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
LABOR,

Defendant.

) Case No. 22-cv-07182-WHA

) **JOINT CASE MANAGEMENT STATEMENT**  
) **AND [PROPOSED] ORDER**

) Date: February 16, 2023

) Time: 11:00 a.m.

) Place: Courtroom 12, 19th Floor

) The Hon. William Alsup

Pursuant to Clerk's Notice dated December 28, 2022, Dkt. No. 15, and pursuant to the Standing Order for All Judges of the Northern District of California dated January 17, 2023, and Civil Local Rule 16-9, the parties jointly submit this Joint Case Management Statement and Stipulated Request To Continue Case Management Conference.

1. Jurisdiction and Service

There are no issues concerning personal jurisdiction, venue, or service. Plaintiff brought this action under the Freedom of Information Act ("FOIA"), 5 U.S.C § 552(a)(4)(B). Defendant has been

1 served.

2 2. Facts

3 This lawsuit was filed on November 15, 2022, and relates to four FOIA requests submitted by  
4 Plaintiffs Center for Investigative Reporting (“CIR”) and Will Evans to the Office of Federal Contract  
5 Compliance Program (“OFCCP”), a component of the U.S. Department of Labor (“DOL”), between  
6 January 2019 and June 2022. These requests were modified into a single FOIA Request as of June 3,  
7 2022, seeking the disclosure of consolidated (Type 2) EEO-1 reports for all federal contractors for the  
8 years 2016 through 2020. EEO-1 Type 2 reports require companies to report the total number of  
9 employees across their establishments by race/ethnicity, gender, and job category.

10 DOL calculates that this request encompasses approximately 75,000 reports from a total of  
11 approximately 24,000 unique federal contractors. DOL began actively processing this request after  
12 Plaintiffs’ final modification in June 2022. No records have been disclosed as of the date of the  
13 statement.

14 According to DOL, the processing of this request is a massive undertaking requiring the  
15 involvement of a number of DOL employees from OFCCP and the Office of the Solicitor. In addition to  
16 existing staff, the FOIA Team has added two highly experienced staff members with database and data  
17 analytic training from DOL’s Branch of Expert Services and Department of Programs Operations to  
18 dedicate their time and expertise in data management to ensure that the processing of this request and  
19 the sorting of data for release is accurate. DOL anticipates that it will be in a position to release the vast  
20 majority of responsive documents—approximately 65,000 reports—by February 24, 2023. The  
21 remaining reports will require further evaluation to determine whether they will be withheld under FOIA  
22 Exemption 4 and possibly other exemptions. Due to the number of reports and the complexity of the  
23 evaluation process, DOL anticipates that this process will be complete by the end of July 2023.

24 The following is DOL’s summary of the processing steps that have occurred and that remain to  
25 be completed:

- 26 • DOL is subject to Executive Order 12600, which sets forth predisclosure notification  
27 procedures for potentially confidential commercial information. Pursuant to 29 C.F.R.

28 § 70.26, DOL’s regulation implementing that Executive Order, DOL is required to provide

- 1 notice to a third-party submitter of confidential commercial information whenever it “has  
2 reason to believe that the information requested under the FOIA may be protected from  
3 disclosure under Exemption 4, but has not yet determined whether the information is  
4 protected from disclosure under that exemption or any other applicable exemption.” The  
5 regulation requires that the submitters be provided a reasonable time to respond to the notice.
- 6 • OFCCP provided notice to contractors covered by this FOIA request through a published  
7 notice in the Federal Register, an email to all federal contractors for whom OFCCP has  
8 contact information, and the [OFCCP Submitter Notice Response Portal](#). (“OFCCP Response  
9 Portal”). This notice was provided on August 18 and 19, 2022. The notice requested that  
10 any entities that objected to the disclosure of the information submit their objections by  
11 September 19, 2022. That deadline was extended to October 19, 2022 to provide sufficient  
12 opportunity for responses in light of numerous requests from contractors for an extension and  
13 inquiries from companies regarding whether they were subject to the FOIA request.
  - 14 • Following the close of the response period, a second email was sent to contractors that  
15 OFCCP determined had not submitted a response. This email was sent to determine whether  
16 the apparent non-response was because the companies were not in fact federal contractors  
17 during the period of 2016-2020, and to confirm that OFCCP’s records were accurate as to the  
18 lack of a response. The companies were given until January 2, 2023 to respond.
  - 19 • OFCCP received objections from approximately 2,500 companies. It also received responses  
20 indicating that over 100 reports corresponded to companies that believed that they were not  
21 federal contractors. OFCCP’s jurisdiction team analyzed these responses to determine if the  
22 assertions of non-contractor status were accurate. OFCCP also undertook an initial sorting  
23 and processing of the objections to prepare a list of companies that had not objected, and  
24 whose EEO-1 reports OFCCP intended to release.
  - 25 • That list of non-objectors was posted on the OFCCP Response Portal on February 2, 2023,  
26 and notice was emailed to all contractors for whom OFCCP had emails the same day.  
27 Contractors were given until February 7, 2023 to notify OFCCP of any errors. OFCCP  
28 extended the response date to February 17, 2023 because the initial responses that OFCCP

received indicated that this list included companies (or related companies) that had previously submitted objections, had not previously received OFCCP's notification emails, or believed that they were not federal contractors. To ensure the accuracy of this list prior to release, OFCCP needs additional time to verify contractor and objector status.

- OFCCP anticipates that it will release the reports of all non-objectors by February 24, 2023.
- OFCCP's jurisdiction team is continuing to examine the responses of additional companies that have asserted non-contractor status. An additional small release is anticipated following this process.
- OFCCP is also in the process of evaluating the objections to release submitted by approximately 2,500 companies. OFCCP anticipates that the process will be complete by the end of June 2023, and a supplemental release of reports may be made at the end of July 2023 following this process.

### 3. Legal Issues

Defendant: DOL does not yet know how many reports will be withheld under Exemption 4. DOL anticipates that the parties will engage in a meet and confer process following the completion of processing as described above regarding any withholdings. DOL believes that following the completion of processing, the following legal issue may be in dispute: whether Defendant has appropriately asserted Exemption 4 with respect to any EEO-1 reports that are not released.

Plaintiffs: Legal issues will include whether Defendants properly refused to withhold records under FOIA, particularly FOIA Exemption 4 and whether FOIA obligations were improperly thwarted through agency regulations.

### 4. Motions

There are no prior or pending motions. The parties anticipate that this matter can be resolved on cross-motions for summary judgment if the parties cannot informally resolve the matter.

### 5. Amendments of Pleadings

The parties do not anticipate amending their pleadings.

### 6. Evidence Preservation

The parties have reviewed the Guidelines Relating to Discovery of Electronically Stored

Information (“ESI Guidelines”). The parties confirm that they have met and conferred regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action.

7. Disclosures

The parties request that they be relieved from the initial disclosure requirements of Federal Rule of Civil Procedure 26(a). The parties agree that initial disclosures are not necessary as this is a FOIA action.

8. Discovery

To date, no discovery has been taken by any party, and the parties do not anticipate based on current information that discovery will be necessary in this case.

9. Class Actions

Not applicable.

10. Related Cases

Not applicable.

11. Relief

The parties will each seek summary judgment. Plaintiffs seek an order directing Defendant to produce all of the contested documents and further order any appropriate attorneys’ fees. Defendant denies that Plaintiffs are entitled to any relief and will seek dismissal.

12. Settlement and ADR

The parties anticipate that they will file motions for summary judgment. The parties request that any consideration of ADR be deferred until after the summary judgment motions are decided.

13. Other References

The parties do not believe that this case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

14. Narrowing of Issues

At this time, it is unknown whether issues can be narrowed until Defendant has produced all responsive, non-exempt records. The parties will meet and confer following the completion of the release in an attempt to narrow issues.

1           15.    Expedited Trial Procedure

2           The parties believe that this case can be resolved on summary judgment. The expedited trial  
3 procedure is therefore inapplicable.

4           16.    Scheduling

5           The parties anticipate that this matter can ultimately be resolved on summary judgment. As set  
6 forth above, DOL anticipates releasing the majority of requested documents within three weeks, and is  
7 evaluating objections to determine the applicability of FOIA exemption to the remaining reports. DOL  
8 will make its first production on February 24, 2023 and anticipates that the final release will be complete  
9 by the end of July 2022. The parties respectfully propose that the case management conference be  
10 continued until March 9, 2023, and that the parties provide a status report seven days before the  
11 conference, regarding the progress of the release and whether a summary judgment motion schedule can  
12 be set at that time.

13          17.    Trial

14          The parties anticipate that this entire case may be resolved on summary judgment.

15          18.    Disclosure of Non-party Interested Entities or Persons

16          On November 15, 2022, Plaintiffs filed their Certificate of Interests Entities, Dkt. 3, stating  
17 Plaintiffs had no such interested entities or persons.

18          Defendant is exempt from this requirement as a federal government entity pursuant to Civil  
19 Local Rule 3-15.

20          19.    Professional Conduct

21          All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for  
22 the Northern District of California.

23          20.    Other

24          The parties believe that there are no other case management orders necessary in this case and  
25 request that the Court continue the Case Management Conference.

DATED: February 9, 2023

Respectfully submitted,

STEPHANIE M. HINDS  
United States Attorney

/s/ Pamela T. Johann  
PAMELA T. JOHANN  
Assistant United States Attorney

Attorneys for Defendant

DATED: February 9, 2023

THE CENTER FOR INVESTIGATIVE  
REPORTING

/s/ D. Victoria Baranetsky  
D. VICTORIA BARANETSKY

Attorneys for Plaintiffs

**ATTESTATION**

I, Pamela T. Johann, hereby attest under penalty of perjury that in compliance with Civil Local Rule 5-1(h)(3), I have obtained the concurrence in the filing of this document from D. Victoria Baranetsky.

/s/ Pamela T. Johann  
PAMELA T. JOHANN

**[PROPOSED] ORDER**

Having reviewed the parties' Joint Case Management Statement, and good cause appearing therefore, it is hereby ordered that:

The Case Management Conference scheduled for February 16, 2023, is continued until March 9, 2023 at 11:00 a.m. The parties shall provide a status report by March 2, 2023.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
WILLIAM ALSUP  
United States Senior District Judge